

# AMENDED AND RESTATED RETENTION AGREEMENT

Between

Randall's Island Family Golf Centers, Inc., et.al.  
Debtors In Possession  
S.D.N.Y Case Nos. 00-B-41065 (SMB) through 00-B-41196

and

Keen Realty Consultants Inc.

Dated: January 12, 2001

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WHEREAS Company and Consultant entered into an Agreement dated May 15, 2000 ("First Agreement"), which First Agreement was approved by Order of the Bankruptcy Court dated June 28, 2000;

WHEREAS the First Agreement set forth the terms and conditions upon which Consultant would render services to Company with respect to the Properties described therein;

WHEREAS Company and Consultant desire to amend and restate the First Agreement with respect to various additional Properties and assets of the Company to be marketed and sold prospectively through and including May 15, 2001 (the term provided for in the First Agreement);

WHEREAS it is the intent of the parties that this amended and restated agreement ("Agreement") shall set forth the terms and provisions of the parties' relationship commencing on the effective date of an Order of the Bankruptcy Court approving this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties agree as follows:

By this Agreement, Keen Realty Consultants Inc. ("Consultant" or "Keen") agrees to act as a Special Consultant to Randall's Island Family Golf Centers, Inc., et.al. Debtors In Possession S.D.N.Y Case Nos. 00-B-41065 (SMB) through 00-B-41196 ("Company") and Company hereby retains Consultant, upon the terms and conditions set forth below, as its Special Consultant.

Consultant shall be and hereby is responsible for the marketing of Company's right, title and interest in each and every asset of the Company (excluding inventory sold in bulk to a buyer not participating in the February 9 auction process), including but not limited to Company's right, title and interest in:

- a. All of its owned and leased real property (including but not limited to all golf, family entertainment centers ("FECs"), ice properties and office leases;
- b. The Canadian properties, Confidence Golf and Golden Spike, Pardoc Vending, Pinnacle Entertainment, and Campgaw;
- c. All of its owned personal property (including but not limited to furniture, fixtures and equipment and shares of stock; excluding inventory sold in bulk to a buyer not participating in the February 9 auction process),
- d. All contracts and other agreements relating to the operation of the Company's businesses, to the extent such rights and interests are being sold; and

**AMENDED & RESTATED RETENTION AGREEMENT**

*Randall's Island Family Golf Centers, Inc. et.al.*

*January 12, 2001*

*Page 2*

- e. All of its intellectual property (including but not limited to trademarks, trade names, and patents).

Each and every asset of Company shall be referred to individually as a "Property" or an "Asset" and collectively as the "Properties" or the "Assets".

**I. Marketing Services And Related Fees:**

- A. Subject to the provisions of this Agreement, Consultant shall have the sole and exclusive authority to offer the Properties for disposition on an "exclusive right to sell" basis. All communications and inquiries regarding the Properties, except those by "Prior Prospects" and "Business Prospects" (as defined below), whether directed to Company (including but not limited to its officers, agents and employees), or Company's counsel, accountants or other professionals, shall be re-directed to Consultant. Company shall retain the complete discretion to accept or reject any proposal.
- B. Consultant's services may include those generally described below, as appropriate.
  - 1. On request, Consultant will review all pertinent documents and will consult with Company's counsel, as appropriate.
  - 2. Consultant will develop and implement, upon the Company's prior approval, a marketing program which may include, as appropriate, newspaper, magazine or journal advertising, letter and/or flyer solicitation, placement of signs, direct telemarketing, and such other marketing methods as may be necessary.
  - 3. Consultant will communicate with potential buyers, brokers, investors, landlords, etc. and will endeavor to locate additional parties who may have an interest in the purchase of a Property.
  - 4. Consultant will respond and provide information to, negotiate with, and solicit offers from prospective purchasers and settlements from landlords and shall make recommendations to Company as to the advisability of accepting particular offers and settlements.
  - 5. When requested, Consultant will meet periodically with Company, its accountants and attorneys, in connection with the status of its efforts.
  - 6. Consultant will work with the attorneys responsible for the implementation of the proposed transactions, reviewing documents, negotiating and assisting in resolving problems that may arise.
- C. Consultant shall arrange for and conduct the auction to be held on or about February 6, 2001, including but not limited to, booking the site to hold the auction, providing sufficient personnel to conduct the auction, and providing such other activities as required to conduct the auction.

**II. Standard Fee**

**AMENDED & RESTATED RETENTION AGREEMENT**

*Randall's Island Family Golf Centers, Inc. et.al.*

*January 12, 2001*

*Page 3*

When Company completes a disposition transaction (i.e., a Property transaction including but not limited to the assignment or sublease of a lease, sale or lease of an owned Property, etc.), whether such transaction is completed individually or as part of a package or as part of the disposition of Company's business or as part of a reorganization plan, then Consultant shall have earned the compensation pursuant to the schedule set forth below. Such fees shall be paid, in full, off-the-top, from the proceeds of sale or otherwise, simultaneously with the closing or other consummation of each transaction. Consultant's compensation shall be based upon a sliding scale that changes in relationship to the aggregate "Gross Proceeds" (as defined below) generated from the disposition of the Properties.

- A. On the first one hundred million dollars (\$100,000,000) of Gross Proceeds, Consultant shall have earned a fee on that tranch of Gross Proceeds equal to one and one-half percent (1.5%) of Gross Proceeds.
- B. On aggregate Gross Proceeds in excess of one hundred million dollars (\$100,000,000) but less than or equal to one hundred thirty million dollars (\$130,000,000), Consultant shall have earned a fee on that tranch of Gross Proceeds equal to two percent (2%) of Gross Proceeds.
- C. On aggregate Gross Proceeds in excess of one hundred thirty million dollars (\$130,000,000) but less than or equal to one hundred forty million dollars (\$140,000,000), Consultant shall have earned a fee on that tranch of Gross Proceeds equal to two and one-half percent (2.5%) of Gross Proceeds.
- D. On aggregate Gross Proceeds in excess of one hundred forty million dollars (\$140,000,000) but less than or equal to one hundred fifty million dollars (\$150,000,000), Consultant shall have earned a fee on that tranch of Gross Proceeds equal to three percent (3%) of Gross Proceeds.
- E. On aggregate Gross Proceeds in excess of one hundred fifty million dollars (\$150,000,000), Consultant shall have earned a fee on such Gross Proceeds equal to three and one-half percent (3.5%) of Gross Proceeds.

III. Compensation Regarding Prior Prospects:

- A. Company has identified certain properties and certain prospect that it expects to imminently have under contract of sale. Those buyers, including affiliates or designees thereof, with respect to their respective Properties (each of whom is a "Prior Prospect") are:

- 1. [REDACTED];
- 2. [REDACTED];
- 3. [REDACTED];
- 4. [REDACTED];
- 5. [REDACTED];
- 6. [REDACTED];

**AMENDED & RESTATED RETENTION AGREEMENT**

*Randall's Island Family Golf Centers, Inc. et.al.*

*January 12, 2001*

*Page 4*

- B. With respect to each of the above-referenced Properties, to the extent that Company and a Prior Prospect mutually execute a contract of sale by January 23, 2001, then Keen will market those contracts for overbids for a minimum fee of \$5,000 per Property plus ten percent (10%) of the overbid per Property; the total fee on such per Property transaction in no event shall exceed two percent (2%) of Gross Proceeds (as defined below).

IV. Compensation Regarding Business Buyers:

- A. Company has identified eight (8) prospective buyers who are interested in buying the Company or all of its Assets. Those buyers, including affiliates or designees thereof ("Business Prospect(s)"), are:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]

- B. Company has identified the following prospective buyers who are interested in buying the Canadian Assets. Those buyers, including affiliates or designees thereof, ("Canadian Prospect(s)") are:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]

- C. Sale to a Business Prospect

1. Contract Executed On or Before the Fourth Business Day Prior to the "Bid Deadline" (As defined in the Debtors' Solicitation For Bids):
  - a) In the event that Company and a Business Prospect (other than [REDACTED]) mutually execute a binding contract of sale, on or before the Fourth Business Day Prior to the Bid Deadline, for the entire business or for selected assets for a price in excess of \$75 million, then, in that event alone, Keen shall reduce its fee as follows:
  - b) If the assets subject to the contract are sold to the contract vendee for the contract price, then Keen shall have earned a guaranteed fee of one hundred fifty thousand dollars (\$150,000); unless the contract vendee is [REDACTED], in which event the guaranteed fee shall be three hundred thousand dollars (\$300,000); or
  - c) Overbids: If

**AMENDED & RESTATED RETENTION AGREEMENT**

*Randall's Island Family Golf Centers, Inc. et.al.*

*January 12, 2001*

*Page 5*

the assets subject to the contract are sold for a price in excess of the contract price,

(i) Only Business Prospect Bidding:

- i. at which hearing the only bidding is by the contract vendee and/or one or more Business Prospects,
- ii. then Keen shall have earned a guaranteed fee of one hundred fifty thousand dollars (\$150,000); unless the contract vendee is [REDACTED], in which event the guaranteed fee shall be three hundred thousand dollars (\$300,000) ; or

(ii) Third Party Bidding:

- i. At which hearing the bidding is by one or more Business Prospects and one or more parties other than a Business Prospect,
- ii. Then Keen shall have earned a guaranteed fee of one hundred fifty thousand dollars (\$150,000) (unless the contract vendee is [REDACTED], in which event the guaranteed fee shall be three hundred thousand dollars (\$300,000)) plus ten percent of the difference between the original contract price and the bid subsequent to the highest bid by a party other than a Business Prospect.

2. Contract Executed Within Four Business Days of the Bid Deadline:

a) In the event that Company and a Business Prospect (other than [REDACTED]) mutually execute a binding contract of sale, within four business days of the Bid Deadline for the entire business or for selected assets for a price in excess of \$75 million, then, in that event alone, Keen shall reduce its fee as follows:

b) If the assets subject to the contract are sold to the contract vendee for the contract price, then Keen shall have earned a guaranteed fee of seven hundred fifty thousand dollars (\$750,000) (unless the contract vendee is [REDACTED], in which event the guaranteed fee shall be nine hundred thousand dollars (\$900,000)); or

c) Overbids: If

the assets subject to the contract are sold for a price in excess of the contract price,

(i) Only Business Prospect Bidding:

**AMENDED & RESTATED RETENTION AGREEMENT**

*Randall's Island Family Golf Centers, Inc. et.al.*

*January 12, 2001*

*Page 6*

- i. at which hearing the only bidding is by the contract vendee and/or one or more Business Prospects,
    - ii. then Keen shall have earned a guaranteed fee of seven hundred fifty thousand dollars (\$750,000) (unless [REDACTED] is the original contract vendee or a bidder, in which event the guaranteed fee shall be nine hundred thousand dollars (\$900,000); or
  - (ii) Third Party Bidding:
    - i. At which hearing the bidding is by one or more Business Prospects and/or one or more parties other than a Business Prospect,
    - ii. Then Keen shall have earned a guaranteed fee of seven hundred fifty thousand dollars (\$750,000) (unless [REDACTED] is the original contract vendee or a bidder, in which event the guaranteed fee shall be nine hundred thousand dollars (\$900,000)) plus ten percent of the difference between the original contract price and the bid subsequent to the highest bid by a party other than a Business Prospect.
  - 3. Minimum Fee Re Small Package Sale: In the event of a sale under this Section "V - Compensation Regarding Business Buyers" for assets less than the entire business or for a price less than \$75 million, then, in that event, the minimum fee earned by Keen with respect to that transaction shall be determined by ascertaining which subsection applies to the facts of the transaction and then by multiplying the minimum fee set forth therein by a fraction created by utilizing the transaction price as the nominator of the fraction and \$75 million as the denominator of the transaction.
  - 4. Fee Cap: In no event shall the compensation payable to Keen exceed the Standard Fee.
- V. Disposition of Office Space: Standard leasing commission based upon five percent (5%) of key money plus a commission on the remaining rent due under the lease based upon the following schedule:
- A. On the first year, five percent (5%),
  - B. On the second year, five percent (5%),
  - C. On the third year, four percent (4%),
  - D. On the fourth through ninth years, three percent (3%),
  - E. On the ten year and beyond, two and one half percent (2.5%),

**AMENDED & RESTATED RETENTION AGREEMENT**

*Randall's Island Family Golf Centers, Inc. et.al.*

*January 12, 2001*

*Page 7*

Plus, in the event that there is a third party procuring broker entitled to compensation, the compensation shall be increased by fifty percent (50%) and shall be shared with such third party procuring broker, subject to approval of the U.S. Bankruptcy Court.

**VI. Additional Compensation Provisions:**

**A. Gross Proceeds:**

1. The term "Gross Proceeds" as used herein shall include the sum of the total consideration transferred to or for the benefit of Company as purchase price for the properties and related assets.
2. The computation of Gross Proceeds as well as the computation of Consultant's fee shall not be affected by the costs of advertising, Company's legal fees, Consultant's expenses nor any ordinary closing costs and/or adjustments, including but not limited to adjustments and/or payments of whatever kind to landlords, lienholders, secured parties, offerors, etc., other than adjustments which are not in the ordinary course and which do affect the purchase price (i.e., inventory cost adjustments).

**B. Company hereby agrees to instruct any escrow agent or counsel to pay Consultant its fees earned in strict compliance with the provisions of this Agreement, off-the-top, directly from the proceeds of the transaction or otherwise. Such fees shall be payable, in full, simultaneously with the closing or other consummation of each transaction. However, in the event of a credit bid, then and in that event, Company hereby agrees to instruct any escrow agent or counsel to pay Consultant its fees earned in strict compliance with the provisions of this Agreement directly from the proceeds of any or all other non-credit bid transactions. Such fees shall be payable as follows**

1. in the event that proceeds exist from a prior closing on a non-credit bid transaction, then Consultant's fee shall be payable, in full, simultaneously with the closing or other consummation of each credit bid transaction, or
2. in the event that proceeds do not exist from a prior closing on a non-credit bid transaction, then Consultant's fee shall be payable, in full, simultaneously with the closing or other consummation of the subsequent non-credit bid transactions.

**C. Consultant shall be entitled to compensation based upon its standard hourly rates for time spent in connection with testimony, preparing for testimony and responding to discovery. Standard hourly rates are \$400/hour for Harold Bordwin and Moe Bordwin; \$300/hour for vice presidents; and \$125/hour for junior real estate staff.**

**VII. EXPENSES AND DISBURSEMENTS:**

- A. All advertising, marketing, traveling, lodging, FedEx, postage, telephone charges, photocopying charges, and other expenses (the "Expenses") incurred connection with performing the services required by this contract shall be borne by**

**AMENDED & RESTATED RETENTION AGREEMENT**

*Randall's Island Family Golf Centers, Inc. et.al.*

*January 12, 2001*

*Page 8*

Company. Company must approve each expense item in excess of \$1,000 prior to the expenditure. The Company shall advance to Consultant expenses pursuant to the agreed upon budget. In addition, should additional Expenses be required, Consultant shall notify Company of such Expenses and Company will advance to Consultant such agreed upon additional Expenses. However, upon Consultant earning fees of \$1,000,000 in the aggregate (including fees earned and paid to Consultant from the sale of certain assets to Klak Golf, LLC in November 2000), the Consultant shall reimburse the Company all Expenses and cover all future Expenses in connection with the performance of its duties hereunder.

- B. Consultant has prepared a marketing plan and budget which has been approved by the Company.

**VIII. SURVIVAL:**

In the event Company and any third party should enter into an agreement providing for the sale, assignment, lease or other disposition of a Property before the expiration of this Agreement and the closing does not occur until after said expiration, then Consultant shall be entitled to a fee in accordance with the terms of this Agreement. If Company, after the expiration of said period, arranges for the sale of a Property to a third party whom Consultant solicited or otherwise introduced to a Property or introduced to the Company or with whom Consultant dealt in connection with a Property or Company prior to said expiration, and the contract signing or closing takes place within one (1) year after said expiration, then Consultant shall be entitled to a fee in accordance with the terms of this Agreement. In addition, in the event that Company enters into a contract, the result of which would entitle Consultant to a fee pursuant to this Agreement and the terms of this paragraph and a bankruptcy hearing/auction to approve such contract and/or solicit higher and better offers is held, then regardless of who may be the successful bidder, Consultant is entitled to a fee pursuant to the terms of this Agreement.

**IX. COMPANY'S RESPONSIBILITIES:**

- A. With respect to each Property, Company has delivered to Consultant the most recent environmental report it has in its possession. Other than as disclosed in such environmental reports the Company does not know of:
1. any known or suspected risk of environmental hazard or contamination; and
  2. any known existing or pending violation(s) of federal, state or local environmental laws or regulations.

Company shall have the continuing obligation to assess the accuracy of the representations contained herein and to advise Consultant in writing as soon as it becomes aware of any inaccuracy, inconsistency, incompleteness or change of circumstances and to correct same. Additionally, if Company has ordered any additional environmental reports or studies, as soon as such become available, Company will immediately provide a true and complete copy of such reports to Consultant and will authorize Consultant to disseminate such reports to prospects.



**AMENDED & RESTATED RETENTION AGREEMENT**

*Randall's Island Family Golf Centers, Inc. et.al.*

*January 12, 2001*

*Page 9*

- B. Company shall deal with Consultant fairly and in good faith so as to allow Consultant to perform its duties and earn the benefits of this Agreement and shall not interfere, prevent or prohibit Consultant, in any manner, prior to or during this sale from carrying out its duties and obligations under the Agreement.
- C. Company shall make available to Consultant all information concerning the Property/Properties requested by Consultant to perform its obligations hereunder. Company shall use its reasonable efforts to provide Consultant with information that is materially accurate and complete to the best of its knowledge at the time it is furnished and Company shall, as soon as it becomes aware of any inaccuracy or incompleteness in any information then or later provided to Consultant, promptly advise Consultant in writing of such inaccuracy or incompleteness and correct the same. Consultant shall under all circumstances have the right to rely, without independent verification, on the accuracy and completeness of all such information supplied to Consultant in connection with Consultant's engagement hereunder and shall not be responsible for the inaccuracy or incompleteness of any information provided to it.

**X. GENERAL PROVISIONS:**

- A. Any correspondence or required notice shall be addressed as follows:

If to Consultant, to: Keen Realty Consultants Inc.  
60 Cutter Mill Road, Suite 407  
Great Neck, NY 11021-3104  
Telephone: (516) 482-2700 / Facsimile: (516) 482-5764  
ATTN: Harold J. Bordwin, President

If to Company: Family Golf Centers, Inc.  
538 Broadhollow Rd.  
Melville, NY 11747  
Telephone: (631) 694-1666 / Facsimile: (631) 694-7729  
ATTN: Philip Gund, Acting CEO

With a copy to: Golenbock Eiseman Assor & Bell  
437 Madison Avenue  
New York, NY 10022  
Telephone: (212) 907-7300 / Facsimile: (212) 754-7300  
ATTN: Jonathan Flaxer, Esq.

- B. Upon Bankruptcy Court approval of this Agreement, it shall be binding upon and shall inure to the benefit of the parties hereto, their successors and assigns. In the event that Company's Chapter 11 cases are converted to Chapter 7 or a Chapter 11 trustee or examiner with expanded powers are appointed, then, in that event, the Agreement and the Amendment shall be binding upon any such fiduciary herein appointed and shall otherwise remain in full force and effect. This

**AMENDED & RESTATED RETENTION AGREEMENT**

*Randall's Island Family Golf Centers, Inc. et.al.*

*January 12, 2001*

*Page 10*

Agreement shall be construed fairly as to all parties and there shall be no presumption against the party who drafted this Agreement in the interpretation of this Agreement. By executing or otherwise accepting this Agreement, Company and Consultant acknowledge and represent that they are represented by and have consulted with legal counsel with respect to the terms and conditions contained herein. This Agreement may be executed in original counterparts and an executed facsimile may be deemed the equivalent of an original.

**C. Indemnity:**

1. Company hereby indemnifies and holds Consultant (which term includes its directors, officers, and employees) harmless against and from all losses, claims, damages or liabilities, joint or several (and all actions, claims, proceedings and investigations in respect thereof), whether by statute, at common law, in equity or otherwise, to which Consultant may become subject, which relate or pertain to or result or arise from Consultant's performance of the services described in this Agreement, and to reimburse Consultant for all reasonable legal and other out of pocket expenses (including the cost of investigation and preparation) as and when incurred by Consultant arising out of or in connection with any action, claim, proceeding or investigation in connection therewith, whether or not resulting in any liability (and whether or not Consultant is a defendant in, or target of, any such action, claim, proceeding or investigation); provided, however, that the Company shall not be liable in any such case to the extent that any such loss, claim, damage or liability is found by a court of competent jurisdiction to have resulted from Consultant's gross negligence or willful misconduct in performing the services which are the subject of the Agreement or as a result of a dispute with a Local Broker (as defined below). If for any reason the foregoing indemnification is unavailable to Consultant (other than as a result of the proviso in the preceding sentence) then Company shall contribute to the amount paid or payable by Consultant as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect not only the relative benefits received by Company, on the one hand, and Consultant, on the other hand, but also the relative fault of Company and Consultant as well as any relevant equitable considerations, provided that, in no event, will Consultant's aggregate contribution hereunder exceed the amount of fees actually received by Consultant pursuant to the Agreement. The reimbursement, indemnity and contribution obligations of Company under this paragraph shall be in addition to any liability which the Company may otherwise have, shall survive any termination or completion of this Agreement and shall be binding upon and extend to the benefit of any successors, assigns, heirs and personal representatives of Company and Consultant.
2. If any action, claim, proceeding or investigation is instituted or threatened against Consultant in respect of which indemnity or contribution may be sought against Company hereunder, Consultant

**AMENDED & RESTATED RETENTION AGREEMENT**

Randall's Island Family Golf Centers, Inc. et.al.

January 12, 2001

Page 11

shall promptly notify Company thereof in writing, but the omission so to notify Company shall not relieve Company from any other obligation or liability that Company may have to Consultant under this Agreement or otherwise. Consultant shall have the right to retain counsel of its choice to represent Consultant in connection with any such action, claim, proceeding or investigation, provided that such counsel shall be reasonably satisfactory to Company. Company will not be liable hereunder for any settlement thereof by Consultant without Company's written consent, which will not be unreasonably withheld.

3. Notwithstanding anything in paragraph C(1) & (2) above, the following shall supercede:

- a) All requests of Keen for payment of indemnity pursuant to this Amended Retention Agreement shall be made by means of an application and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Amended Retention Agreement and is reasonable based upon the circumstances of the litigation or settlement in respect of which indemnity is sought, provided, however, that in no event shall Keen be indemnified in the case of its own bad-faith, self-dealing, breach of fiduciary duty, gross negligence, reckless or willful misconduct, or malpractice arising from the foregoing (other than ordinary negligence);
- b) In no event shall Keen be indemnified if the Debtor, the estate, or the official committee of unsecured creditors, asserts a claim for, and a court determines by final order that such claim arose out of, Keen's own bad-faith, self-dealing, breach of fiduciary duty, gross negligence, reckless or willful misconduct, or malpractice arising from the foregoing (other than ordinary negligence); and
- c) In the event that Keen seeks reimbursement for attorneys' fees from the Debtor pursuant to the Amended Retention Agreement, the invoices and supporting time records from such attorneys shall be included in an interim or final application to the court and such invoices and time records shall be subject to the United States Trustee's guidelines for compensation and reimbursement of expenses and the approval of the Bankruptcy Court under the standards of §§ 330 and 331 of the Bankruptcy Code without regard to whether such attorney has been retained under § 327 of the Bankruptcy Code.

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of the  
Bankruptcy  
Code.

- D. The Company shall have the right, upon 45 days prior written notice to Consultant, to terminate this Agreement, if in the Company's good faith judgment, the Consultant is not diligently pursuing disposition transactions.

**AMENDED & RESTATED RETENTION AGREEMENT**

*Randall's Island Family Golf Centers, Inc. et al.*

*January 12, 2001*

*Page 17*

Upon receipt of such written notice, Consultant shall have 30 days to cure such breach and shall submit a written report to the Company evidencing in detail the steps taken by Consultant to cure. If the Consultant does not cure such breach within such 30-day cure period, this Agreement shall be terminated on the 45<sup>th</sup> day subject to the Company's obligation to pay the Consultant all fees due and owing pursuant to this Agreement and all Expenses incurred through such date. Such termination is without prejudice to Consultant's rights pursuant to paragraph "VIII" hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on their behalf by their respective duly authorized representatives as the set-forth below.

AGREED AND ACCEPTED

this 12 day of January, 2001

**KEEN REALTY CONSULTANTS INC.**

By: 

Name: Harold J. Bordwin

Title: President

AGREED AND ACCEPTED

this 12 day of January, 2001

**RANDALL'S ISLAND FAMILY GOLF  
CENTERS, INC., ET.AL.**

**DEBTORS-IN-POSSESSION**

Case Nos. 00-B-41065 (SMB) through 00-  
B-41196 (SMB)

By: 

Name: R.T.R. V. Card

Title: CEO

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